IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4557 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KALIDAS MOTIBHAI THAKOR

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 4557 of 1987

MR MUKESH H RATHOD for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/06/2002

ORAL JUDGEMENT

The petitioner, Driver of the respondent Corporation in this petition under Article 227 of the Constitution of India, has challenged the award of the

Labour Court, Baroda, passed in Reference (LCV) No. 305 of 1980 dated 15.10.1986 whereby the Labour Court though set aside the order of dismissal dated 22nd June 1978, directed the respondent Corporation to reinstate the petitioner to his original post with continuity in service, denied the backwages for the interregnum period.

2. The petitioner, at the relevant time, was serving as a Driver of the Makarpura City Depot of the respondent Corporation. A chargesheet was issued against the petitioner for remaining unauthorisedly absent from 13.4.1978 to 26.4.1978 and from 9.5.1978 to 18.5.1978. It appears that the petitioner did not remain present in the inquiry and therefore, an ex parte inquiry was held against the petitioner and he was dismissed from service on 22nd August 1978. A reference dated 19.7.1978 under Section 10(1)(C) of the Industrial Disputes Act was preferred for adjudication as to his demand for reinstatement to his original post with full backwages. In the statement filed before the Labour Court, the petitioner has, inter alia, pointed out that he remained absent on account of his sickness. He in fact sent the leave report by Registered Post to the Depot Manager. He has pointed out that as he was under medical treatment because of the chest as well as abdomen pain, he remained absent. He has sent the medical certificate to the Depot Manager. He has challenged the inquiry on the ground that the same was against the principles of natural justice.

In the written statement at Exh.6, which has been filed by the respondent Corporation, it was inter alia pointed out that the petitioner has remained unauthorisedly absent from 13.4.1978 to 17.5.1978 and has, therefore, committed serious misconduct. Regular departmental inquiry was held against him and his service was rightly terminated with effect from 22nd June 1978.

It may be stated that the Labour Court by its order at Exh.12 dated 4.4.1984 has held that the inquiry held by the respondent Corporation against the petitioner was against the principles of natural justice and therefore, the same was illegal and bad in law. It is not in dispute that the respondent has not led further evidence before the Labour Court to justify its action and has placed reliance on the papers produced at the departmental inquiry.

3. On considering the material on record, the Labour Court has specifically observed that the petitioner has remained absent from 2.5.1978 to 6.5.1978 and from

9.5.1978 to 18.5.1978, in all 15 days. It is further observed that the petitioner has in fact produced the leave reports as well as medical certificates on 22nd May 1978, i.e. after the date of the chargesheet. From the medical certificates it is clear that the petitioner was suffering from chest pain as well as abdomen pain and had a swelling on spleen. A specific finding is recorded by the Labour Court that the petitioner has not sent leave reports and medical certificates, but the same have been sent subsequently. After considering the past record also, it does not appear that the petitioner has committed a serious misconduct. In view of the same, it was held by the Labour Court that the punishment of dismissal is quite disproportionate to the proved misconduct and therefore, the order of reinstatement in favour of the petitioner is passed.

4. On going through the reasoning recorded as well as the conclusion arrived at by the Labour Court, it appears that the Labour Court has denied the backwages on the ground that the petitioner did not send the leave reports as well as the medical certificates in time and considering this negligence on the part of the petitioner, the petitioner is not entitled to backwages. In my opinion, this finding recorded by the Labour Court is contrary and harsh in as much as though the Labour Court has accepted the fact that the petitioner has a genuine reason for remaining absent and accordingly was reinstated, but denied the backwages solely on the ground that the leave reports were sent subsequently. As observed earlier, the petitioner has not wasted any further time in sending the leave reports together with the medical certificates. Once they have been accepted by the Court, it would be too much to deny the backwages for more than eight years for which the petitioner cannot be blamed for. Considering the fact that the order of dismissal was passed on 22nd June 1978 and the dispute was raised on 19.7.1980 for which the petitioner at the most can be held guilty of negligence, and he can be denied backwages for the said period. In any case, the reference has remained pending before the Labour Court upto 15.10.1986 when the award was passed. In the meantime, the petitioner must have earned wages to meet with his livelihood by way of gainful employment. Considering this aspect, in my opinion, the ends of justice would be met if the backwages for a period of three years are awarded instead of awarding backwages for the period from 19.7.1980 to 15.10.1986 i.e. for six years. I accordingly partly allow this petition by modifying the award passed by the Labour Court to the following extent:

The order directing the reinstatement of the petitioner to his original post with continuity of service shall remain in tact. However, the respondent Corporation shall pay the backwages to the petitioner for a period of three years and shall pay the same within three months from the date of receipt of the order of this Court. Rule is made absolute accordingly. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

Sreeram.